

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission
On Its Own Motion

-vs-

Ameren Illinois Company
d/b/a Ameren Illinois

Docket No. 11-0341

Reconciliation of revenues collected
under Rider EDR with the actual costs
associated with energy efficiency and
demand-response plans.

Reconciliation of revenues collected
under Rider GER with the actual costs
associated with energy efficiency plans.

**REPLY BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission (“Commission”), respectfully submits its Reply Brief in the above-captioned matter.

I. Introduction

The Ameren Illinois Company (“AIC” or “Company”), the Natural Resources Defense Council (“NRDC”), Staff, and jointly the People of the State of Illinois (“AG”) and the Citizens’ Utility Board (“CUB”) (collectively “AG/CUB”) filed Initial Briefs (“IBs”) on May

7, 2013. Some of the arguments made in the IBs of AIC, NRDC, and AG/CUB have already been fully addressed in Staff's IB. Staff maintains its positions set forth in its IB, and in the interests of brevity will not reiterate them here. Any position taken by Staff in the IB not specifically addressed here should not be considered waived.

Staff continues to contend that the costs associated with AIC's expenditures on the SB HVAC Program under Rider GER were not reasonably and prudently incurred. Staff Ex. 2.0R at 18. AIC acted imprudently and unreasonably by continuing to spend ratepayer funds on the SB HVAC Program, despite clear evidence that the projected benefits of the energy efficiency program would not exceed the projected costs for PY2. Id. at 4; Joint Cross Ex. 1 at 2. AIC was in possession of evidence early in PY2 that indicated that continuation of the cost-ineffective tune-up measures in the SB HVAC Program was expected to substantially reduce net benefits to customers during PY2. Staff Ex. 2.0R at 4; Joint Cross Ex. 1 at 3. Accordingly, Staff recommends that the Commission approve the adjustment to Rider GER recoverable costs to disallow all SB HVAC Program costs recovered through Rider GER for PY2, \$119,550. Staff Ex. 2.0R at 4.

In its approval of Ameren's Natural Gas Energy Efficiency Plan ("GEE Plan") (Joint Cross Ex. 1 at 15-115) in Docket No. 08-0104, the Commission authorized AIC to prudently modify the portfolio at its discretion as additional information regarding the effectiveness of particular programs, and regarding market conditions, became available. Final Order at 18, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS Illinois Power Company d/b/a AmerenIP: Petition for Approval of the Energy Efficiency and Demand-Response Plan, Docket No. 08-0104 (October 15, 2008) (hereinafter "GEE Plan Order"). Information became

available that made it clear that the planning assumptions were not reasonable. Staff Ex. 4.0R at 5; Staff Ex. 4.1. AIC ignored, or at least failed to act on this information to minimize detrimental impacts to ratepayers during PY2. Id. As a result of AIC's failure or refusal to act, ratepayers were harmed. Id. The record is clear that AIC knew that the HVAC gas tune-up measures in the SB HVAC Program were not cost-effective, knew those measures were unlikely to become cost-effective, and yet took no actions to eliminate or limit the gas tune-up measures to make the SB HVAC Program cost-effective in PY2. It is unreasonable to allow AIC to cite portfolio level cost-effectiveness as its defense and entire basis for alleging prudent management of the SB HVAC Program. Id.

II. It is Good Policy to Protect Ratepayers

Staff's proposal to disallow the costs incurred under AIC's SB HVAC Program protects ratepayers from the imprudent decisions made by the Company. The Company and intervening parties disagree and argue at length that adoption of Staff's position in this proceeding would be detrimental to energy efficiency in Illinois and could result in elimination of energy efficiency programs in Illinois. See, e.g., AIC IB at 26. Sections 8-103, 8-104, and 16-111.5B of the Act make it clear that energy efficiency programs in Illinois will continue to exist in Illinois. A Commission decision regarding imprudence of a utility's expenditures on energy efficiency (where the record shows that \$31.1 million of the over \$31.2 million in costs incurred under the riders was reasonably and prudently incurred by the Company) can only serve to increase net benefits to ratepayers in Illinois for the years to come. Staff's recommendation will benefit Illinois ratepayers by making it clear to AIC that the Commission believes that ratepayers are entitled to the cost-effectiveness associated with reasonable and prudent decision-making. This is critical as ratepayer

funding of energy efficiency continues to increase, as Section 16-111.5B provides for additional funding in excess of the Sections 8-103(d) and 8-104(d) ratepayer impact spending caps for energy efficiency programs in order to acquire all cost-effective energy efficiency. Literally, hundreds of millions of dollars of ratepayer funds are spent on EE in Illinois every year. A Commission finding of imprudence in this docket for \$119,550 will not eliminate the hundreds of millions of dollars being spent on statutorily-mandated EE programs in Illinois. Further, Sections 8-103(i) and 8-104(i) are clear that if the utilities fail to spend funds to achieve savings goals then either the IPA will take over administration of the portfolio of EE programs (8-103(i)) or a third party program administrator chosen by the Commission (8-104(ii)) will take over administration of the EE portfolio. Thus, the statutes make it clear that funds will be spent on cost-effective EE in Illinois, and a Commission finding of imprudence in this docket will not change that. While the statutes require funds to be spent on EE, the statutes also require that the funds be spent in a reasonable and prudent manner. The statutes also designate the Commission is charged with ensuring the EE funds are spent in a reasonable and prudent manner. Accordingly, a finding that \$119,550 was spent imprudently and unreasonably in this docket would simply be a fulfillment of the Commission's statutory obligation to protect ratepayers.

Further, Staff disagrees with AIC that adoption of Staff's recommendation would lead to an unreasonable level of risk. To alleviate AIC's concerns with respect to risk, if AIC wants to implement a cost-ineffective measure in its energy efficiency programs, then AIC can justify why the cost-ineffective measure should be implemented in its energy efficiency plan filing and the Commission can make a decision about whether or not inclusion of the cost-ineffective measure is appropriate. This approach is consistent with

the approach taken by Nicor Gas in its Section 8-104 energy efficiency plan. Staff Ex. 4.0R at 16. This is also consistent with past Commission orders, where the Commission concluded that voluntary gas and electric energy efficiency plans filed with the Commission “should only include measures shown to be cost-effective for Illinois ratepayers... unless extenuating circumstances are shown that would argue for inclusion of such measures or programs.” Final Order at 17-18, MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, Docket No. 12-0132 (October 17, 2012).

Indeed, AIC identified a couple cost-ineffective energy efficiency measures in its GEE Plan and attempted to justify why those cost-ineffective energy efficiency measures should be included in the GEE Plan. Ultimately, AIC’s arguments to include the cost-ineffective measures in the voluntary gas energy efficiency programs were rejected and the Commission ordered AIC to only implement the measures if they are projected to be cost-effective. GEE Plan Order at 10-11. Notably, AIC failed to notify the Commission that gas tune-ups were cost-ineffective measures in the GEE Plan approved by the Commission. Staff Ex. 4.0R at 16-17.

III. Reasonableness and Prudence of AIC’s Expenditures on the SB HVAC Program

The parties mischaracterize the evidence in the record and argue that AIC actually modified the SB HVAC Program in PY2 based on the implementer’s recommendations, based upon the testimony of AIC Witness Woolcutt that “Ameren Illinois took steps to limit the number of tune-ups and cultivate ally participation and installation of the equipment.” AIC Ex. 4.0 at 10. However, Woolcutt’s testimony is directly contradicted by the

implementer's final version of the PY2 implementation plan which indicates the incentives for the incentives for the cost-ineffective gas tune-up measures have not been eliminated or reduced and the SB HVAC Program was projected to be cost-ineffective for ratepayers in PY2. Joint Cross Ex. 1 at 293-294, 353, 391. As discussed further below, it is clear that AIC made no modifications to the SB HVAC Program in PY2 that would minimize risk to ratepayers by limiting or eliminating the cost-ineffective gas tune-ups.

As AIC witness Dr. Chamberlin states:

The low TRC at the end of program year 1 is due to a higher than expected proportion of tune-ups to equipment replacements. The Program Year 2 Business Plan indicates that by limiting the total number of tune-ups and directing the program funds towards incentives for furnace and boiler replacements the TRC will exceed 1.0 by the end of the three year plan. And, the modification process continued with the Program Year 3 implementation plan. That most recent plan modified the tune-up measure in several ways, including reducing the tune-up incentive payment to reduce the program participation and costs. The goal was again to improve the overall cost effectiveness.

Ameren Ex. 5.0 at 15 (emphases added). As noted by Dr. Chamberlin, increasing funding for incentives for the cost-effective furnace and boiler replacements (in an effort to increase participation), and decreasing funding for the cost-ineffective gas tune-up measures in order to limit the total number of cost-ineffective gas tune-ups (which could be immediately accomplished at no risk to ratepayers by simply dropping the cost-ineffective gas tune-up measure completely, similar to the approach AIC took with the cost-ineffective gas griddle measure, see Joint Cross Ex. 1 at 346-348) could increase the cost-effectiveness of the SB HVAC Program. Staff does not dispute that a modification of the plan to minimize cost-ineffective tune-ups, in light of the information that AIC possessed at the time, would have been a prudent decision; however, Staff believes that AIC made no

modifications in PY2 to that effect. Joint Cross Ex. 1 at 293-294, 353, 391. Staff emphasizes that AIC did not increase funding for incentives for the cost-effective furnace and boiler replacements and did not make any effort to limit the total number of cost-ineffective gas tune-ups in PY2. Id. As Dr. Chamberlin correctly points out, it was not until PY3 (which is over nine months after the implementer emphasized to AIC that gas tune-ups will ultimately lead to low TRCs) that AIC made any effort to limit the number of cost-ineffective gas tune-up measures (the prudence of AIC's decisions for PY3 is not the subject of this docket). AIC Ex. 5.0 at 15. As Staff points out, it was not until four months into PY5 (October 15th, 2012) that AIC finally discontinued the cost-ineffective gas tune-up measure from the standard program. Staff Ex. 4.0R at 17. Consistent with Commission policy, Staff contends that ratepayers are entitled to the cost-effectiveness associated with reasonable and prudent decision-making and should not have to suffer substantial one year losses (of which occurred in PY2 due to AIC continuing to promote cost-ineffective gas tune-ups in the SB HVAC Program). This position is consistent with past Commission orders. See, e.g., Final Order at 16, MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, Docket No. 12-0132 (October 17, 2012).

Further, for PY2, the applicable Rider GER tariff explicitly provides for cost recovery based on the GEE Plan Order and the Commission-approved GEE Plan. The GEE Plan that the Commission approved explicitly states that cost-effectiveness is measured at the measure, program, and portfolio level and that AIC chose the energy efficiency programs included in the GEE Plan on the basis that they could enable the Company to scale the

programs up or down quickly such that AIC could rapidly respond to market changes.

Joint Cross Ex. 1 at 23. The Commission-approved GEE Plan states:

This is a portfolio that:

- Is cost-effective at the measure and program level (excluding the Residential Low Income program) and portfolio level. The overall portfolio benefit-cost ratio used the Total Resource Cost (TRC) test. The portfolio-wide TRC benefit-cost ratio is estimated to be 2.35.

...

- Is scalable, to enable the Company to ramp programs up or down as needed. At this stage in the process, predicting precisely how each program will be met by the market is not possible. Therefore, having programs within the portfolio that can be quickly scaled up or down is essential to enable a rapid response to market changes. In particular, it is important that the portfolio include programs that can be efficiently scaled up as annual savings targets increase.

Joint Cross Ex. 1 at 23 (emphases added). AIC's inaction in PY2 with respect to continuing the cost-ineffective gas tune-up measure in the SB HVAC Program as is not only contradicts the Commission-approved GEE Plan but is unreasonable and imprudent.

The parties misconstrue the bundling of the cost-ineffective gas tune-up measure with other measures which they argue demonstrates a modification of the SB HVAC Program in PY2 and accordingly, the costs were prudently incurred. To be clear, AIC added the cost-ineffective tune-up measure to a different program (Demand Control Program) in PY2, while keeping the cost-ineffective gas tune-up measure unchanged in the SB HVAC Program in PY2. AIC added the cost-ineffective tune-up measure to a bundled offer in the Demand Control Program and offered the bundle free of charge in order to increase participation in the failing Demand Control Program. Joint Cross Ex. 1 at 354; Staff Ex. 4.1 at 23. The decision to bundle the gas tune-up measure was made

before the implementer gave the presentation to AIC that indicated that furnace tune-ups will ultimately lead to a low TRC for the SB HVAC Program. Staff Ex. 4.1 at 21, 23. Thus, it is clear that the bundling of the tune-ups was not a modification that AIC made in response to the implementer's concerns about the SB HVAC Program. While the cost-ineffective gas tune-up was added to a different program, it is Staff's understanding that AIC was still planning to credit any savings from the measure to the SB HVAC Program. Thus, failure to consider the planned 340 gas tune-ups from the bundled offer in the three-year cost-effectiveness forecast for the SB HVAC Program that AIC relied upon to justify continuing the program is unreasonable.

The Parties also argue that the continuation of the cost-ineffective tune-ups is necessary to ensure program allies would be engaged. Program allies (HVAC contractors) would continue to be engaged to offer the cost-effective high efficiency HVAC systems to customers. See generally, Staff Ex. 4.2. Engagement of allies would have continued regardless of whether the cost-ineffective gas tune-up measure was offered. Id. Further, the Company was engaging allies through the electric energy efficiency programs and the Company would be engaging allies through the gas energy efficiency program, just not engaging the allies to perform cost-ineffective gas tune-ups. Id.

Since the record shows there is no sound reason or extenuating circumstance that justifies continuing the cost-ineffective gas tune-up measure, the recovery costs should be disallowed. This is true because continuation of this cost-ineffective measure substantially reduces net benefits to ratepayers in PY2. The cost-ineffective gas tune-up measure is not necessary to engage program allies and it is not tied to cost-effective measures in the SB HVAC Program

While AIC alleges the implementer recommended continuation of the SB HVAC Program, Staff notes that before the implementer provided the cited recommendations, the implementer made recommendations to AIC to focus on cost-effective energy efficiency programs given limited budgets and the economic downturn. Staff Ex. 4.1 at 6. The implementer also emphasized that gas tune-ups will ultimately lead to a low TRC, yet AIC made the decision to keep the cost-ineffective tune-ups in the SB HVAC Program. Staff Ex. 4.1 at 21. Based on AIC's decision, the implementer looked into how the cost-effectiveness of the energy efficiency program could be improved if gas tune-ups continue to be offered. Joint Cross Ex. 1 at 289, 293-294. Due to how cost-ineffective the gas tune-up measures are, the result of that analysis was that the number of cost-ineffective gas tune-ups performed would need to be limited. Joint Cross Ex. 1 at 293. AIC took no steps to limit the number of cost-ineffective gas tune-ups in PY2 at the expense of ratepayers. Joint Cross Ex. 1 at 293-294, 353, 391; AIC Ex. 5.0 at 15. It is clear that this inaction was unreasonable and imprudent given the information AIC had available in PY2. AIC's decision to not try to limit the cost-ineffective tune-ups in PY2 in order to ensure the SB HVAC Program provides net benefits to ratepayers is not within the range of decisions reasonable persons might have made. AIC IB at 4.

One of AIC's main arguments that it was prudent to continue the SB HVAC Program is that AIC was simply following the implementer's advice and since the implementer did not explicitly recommend in writing that AIC discontinue the SB HVAC Program, AIC was necessarily prudent. AIC IB at 13. Staff takes issue with this concept. To require that an implementer recommend to the utility termination of an energy efficiency program that it is paid to implement in order for the decision to be deemed prudent is an

unreasonable basis for the determination of prudence. Accordingly, it is also unreasonable to deem an energy efficiency program as prudent based simply upon a lack of a recommendation by an implementer to terminate an energy efficiency program (again, which the implementer is paid to implement). There is clearly a conflict of interest in using a paid implementer's recommendations as the sole means of determining prudence, which is why it is the utility's responsibility to prudently manage their contracts with energy efficiency program implementers to ensure ratepayers are protected. For PY2 at least, AIC structured the implementer's contract in such a way that the implementer still gets paid for running the energy efficiency program regardless of whether it is cost-effective. Staff Ex. 4.2 at 5-6. While the implementer pointed out that continuing the cost-ineffective gas tune-ups would lead to a low TRC, it is AIC who ultimately had the responsibility to make a prudent decision about whether the cost-ineffective tune-ups should be discontinued. The fact that it is the utility's responsibility for deciding whether to continue or discontinue an EE program is further demonstrated by the implementer's major doubts expressed about the Demand Control Program. Joint Cross Ex. 1 at 353-354. Despite the fact the implementer expressed great concerns regarding the Demand Control Program, the implementer never recommended discontinuing the Demand Control Program in the PY2 implementation plan, it simply pointed out the reality of the situation. Lack of implementer recommendations for discontinuing the Demand Control Program in PY2 could be due to the fact that the implementer was going to be paid even more money than they originally contracted for to implement the Demand Control Program in PY2. Joint Cross Ex. 1 at 353-354. Staff urges the Commission to reject AIC's proposed standard of

prudence that suffers from the aforementioned problems and does not adequately protect ratepayers.

Staff disagrees with the argument brought by the AG/CUB that discontinuation of the SB HVAC program “would not have provided benefits to the small business customers who were paying for Ameren’s energy efficiency programs and would not have created a foundation to engage those customers in programs in future years.” AG/CUB IB at 11.

Staff notes that customer engagement with those small business customers would have continued even if the SB HVAC Program was dropped through AIC’s other small business program offerings and through the much larger electric energy efficiency programs available to the customer class. By definition, had AIC discontinued the cost-ineffective SB HVAC Program, net benefits for the small business customers would actually substantially increase since they would no longer have to fund the SB HVAC Program that produced negative net benefits. Staff Ex. 4.0R at 12-13. As noted in Staff’s IB, the SB Food Service Program was very cost-effective, and despite the implementer’s recommendation to focus on cost-effective energy efficiency programs, AIC made the decision to increase funding on the cost-ineffective SB HVAC Program during PY2 without limiting or eliminating the cost-ineffective gas tune-up measures. This decision was imprudent and substantially reduced net benefits to the ratepayers, including the small business customers, as they had to fund an energy efficiency program that was expected to and did in fact produce negative net benefits to ratepayers in PY2. Staff Ex. 4.0R at 19-20.

IV. Energy Efficiency Portfolio Standard Programs (Sections 8-103 and 8-104)
Versus Other Energy Efficiency Programs in Illinois

Staff believes that there is a clear distinction that is important to recognize between the energy efficiency programs mandated under Sections 8-103 and 8-104 of the Act and all other energy efficiency programs offered in Illinois. In support of their positions, the parties cite Commission orders from proceedings convened under Sections 8-103 and 8-104 rather than energy efficiency proceedings that are not governed by the detailed provisions contained in Sections 8-103 and 8-104 of the Act. Sections 8-103 and 8-104 contain very specific statutory requirements which govern the Commission's approval of the energy efficiency plans. AIC's GEE Plan was filed with the Commission for approval pursuant to Section 9-201 of the Act and 83 Ill. Adm. Code 200.100, not Section 8-104. Section 9-201 does not contain specific statutory requirements for energy efficiency plans. In its approval of the GEE Plan Order, the Commission stated that "[AIC's] proposed gas energy efficiency plan, as modified and described in the prefatory portion of [the GEE Plan Order] is reasonable and will promote the public interest and should be approved." GEE Plan Order at 22. Cost recovery pertaining to Rider GER, including the \$119,550 at issue in this proceeding, is governed by the provisions contained in the GEE Plan Order, the Commission-approved GEE Plan, and the Rider GER tariff applicable to the PY2 reconciliation period. AIC deviated from its Commission-approved GEE Plan, the GEE Plan Order, and the Rider GER tariff when it decided to promote cost-ineffective measures at the expense of ratepayers in PY2.

In their IBs, the AG/CUB, NRDC, and AIC appear to be inappropriately treating the Rider GER energy efficiency programs implemented during PY2 as Section 8-104 energy

efficiency programs. The Commission is required under its rules to ensure reconciliation of revenues under Rider GER occurs in the manner specified in the tariff in effect during the reconciliation period PY2. For PY2, the applicable Rider GER tariff explicitly provides for cost recovery based on the GEE Plan Order and the Commission-approved GEE Plan. Nowhere in the Rider GER tariff in effect during PY2 that governs cost recovery related to PY2 is Section 8-104 referenced. Section 8-104 did not apply when the Commission approved the GEE Plan. The provisions of Section 8-104 only apply to the EE plans that the utilities file with the Commission pursuant to subsection (f) of Section 8-104 of the Act. It is the provisions of the GEE Plan Order, Commission-approved GEE Plan, and Rider GER tariff in effect during PY2 that govern the reconciliation of revenues under Rider GER in this docket. Staff urges the Commission to reject the arguments presented in other parties IBs that would appear to ignore these provisions in favor of those specified in Section 8-104. Additionally, other parties to this matter contend that the TRC test applies at the portfolio level only, rather than at the individual program or measure level under the GEE Plan Order. The Commission-approved GEE Plan states that cost-effectiveness is measured at the measure, program, and portfolio level. Joint Cross Ex. 1 at 23. The Commission-approved GEE Plan states that the portfolio is cost effective at all three levels. Id.

The Commission made clear its concerns regarding the cost-effectiveness of GEE programs and measures and its desire that AIC monitor the cost-effectiveness of these programs and measures and react appropriately to changes in various market or other program-related factors. As previously noted, the Commission explicitly ordered AIC to monitor the cost-effectiveness of some gas measures in light of evidence that

demonstrated the measures were forecasted to be cost-ineffective. GEE Plan Order at 10-11. The order further stated that AIC should monitor the projected benefits and costs of some proposed gas efficiency measures and AIC should only market the efficiency measures if and when projected benefits exceed projected costs. Id. at 11.

The Commission's concerns regarding cost-effectiveness are clear. The dismal projected benefit-cost ratio for PY2 for the SB HVAC Program should have prompted AIC to exercise the flexibility granted by the Commission and not market or implement the cost-ineffective measures and programs. Instead, despite the highly cost-ineffective forecast for the SB HVAC Program for PY2, AIC continued to spend ratepayer funds on this program throughout PY2.

Staff recognizes the parallel made by other parties between the Rider GER portfolio and portfolios developed under Sections 8-103 and 8-104; however, Staff does not believe that the same requirements apply here, as the Rider GER portfolio was not developed under Section 8-104. The energy efficiency portfolios established under Sections 8-103 and 8-104 are stand-alone amalgamations of programs and measures that are assembled to meet specific statutory energy savings goals. Ultimately, the utilities are measured on the energy savings delivered under Section 8-103/8-104 and are subject to penalties for failure to meet goals, but the portfolio must also address additional concerns such as the carve outs that are administered by the Illinois Department of Commerce and Economic Opportunity ("DCEO"). The significant differences in the programs leave room for interpretation that the same standards do not necessarily apply to both.

In addition, Section 8-103/8-104 EE plans must adhere to a capped budget specified in statute in order to achieve the energy savings goal or be subject to penalties

or loss of EE programs to either the IPA or a third party program administrator of the Commission's choosing. 220 ILCS 5/8-103(i); 220 ILCS 5/8-104(i). While the Commission capped the budget in the GEE Plan Order, the Commission did not mandate that AIC had to achieve annual energy savings goals for the voluntary gas EE programs to avoid penalties.

While funding was not approved for emerging technologies under the GEE Plan Order and thus the Rider GER tariff in effect during PY2 does not provide cost recovery for such expenses, the Parties nevertheless argue that adoption of Staff's position in this proceeding would limit expenditures on emerging or innovative technologies in future years; however, Staff would note that in future years the provisions of Sections 8-103 and 8-104 apply and those statutes already specifically limit funding on these items. Specifically, Sections 8-103(g) and 8-104(g) limit the funding to that can be spent on emerging technologies to 3% of the portfolio's resources, likely to ensure that the policy objective for the statutorily-mandated EE programs to reduce direct and indirect costs to consumers as specified in Section 8-103(a) is achieved. Section 8-103(a) states in part:

It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures. As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test.

220 ILCS 5/8-103(a) (emphasis added). By the definition of "cost-effective", this policy objective can only be achieved if energy efficiency investments are cost-effective.

In other words, promoting cost-ineffective measures and programs only serves to reduce the likelihood of achieving this policy objective, with the exception that under certain extenuating circumstances (which are not present in this case), it may be warranted to offer a cost-ineffective measure if it is tied to highly cost-effective measures. For example, if it is necessary to offer the cost-ineffective measure in order to get customers to adopt the highly cost-effective measures in a program; however, the cost-ineffective gas tune-ups at issue in this proceeding are not necessary. Given HVAC systems tend to be very “forgiving” systems, the cost-ineffective gas tune-ups AIC promoted through the SB HVAC Program serve to extend the life of customers’ inefficient furnaces and boilers, thus reducing the likelihood that the customer will need to participate in the SB HVAC Program in a later year to purchase a highly cost-effective new HVAC system. Joint Cross Ex. 1 at 390. Further, some customers could feel that since they are getting their systems “tuned-up”, that by doing this which saves a little energy, they are “doing enough” to save energy, and thus there is no need to purchase a (cost-effective) high efficiency HVAC system (which lasts many years) so long as they continue getting tune-ups of their existing HVAC system every couple of years (the cost-ineffectiveness of the tune-ups are not advertised to customers). This situation does not further the policy goal established in Section 8-103(a) as it is only the cost-effective high efficiency HVAC systems with long lifetimes that can contribute to “avoiding or delaying the need for new generation, transmission, and distribution infrastructure” which is the whole purpose of pursuing energy efficiency to “reduce direct and indirect costs to consumers”. 220 ILCS 5/8-103(a).

Moreover, Section 9-201, the Commission-approved GEE Plan, and the GEE Plan Order contain no requirement that the “overall portfolio... represent a diverse cross-section

of opportunities for customers of all rate classes to participate in the programs”, whereas Section 8-103(f)(5)/8-104(f)(5) specifically links the diverse cross-section of opportunities for customers of all rate classes to participate requirement to the minimum requirement that the EE portfolio must be shown to be cost-effective, excluding low-income programs, in order for the EE plan to be approved by the Commission. These two provisions – (i) diverse cross-section for customers of all rate classes to participate and (ii) portfolio level cost-effectiveness – are listed together as one of the seven filing requirements for Section 8-103 EE plan approval. 220 ILCS 5/8-103(f)(5); 220 ILCS 5/8-104(f)(5). Thus, one could interpret Section 8-103(f)(5)/8-104(f)(5) to mean that part of the reason that one of the minimum requirements for EE plan approval under Section 8-103/8-104 is for the EE plan to be cost-effective at the portfolio-level is due in part to the fact that the EE plan has to ensure there is an opportunity for customers of all rate classes to participate in the EE programs, of which it is well known that the costs of EE vary across rate classes. In contrast, AIC did not propose to offer the EE programs under the GEE Plan to all customer classes. In 2008, AIC voluntarily sought and received Commission approval in Docket No. 08-0104 to provide natural gas energy efficiency programs to certain other eligible retail customers, limited to residential and small business customers.

As a result, it is sound policy to avoid over-construing the provisions specified in Sections 8-103 and 8-104 as being applicable to the voluntary gas EE program that is at issue in this proceeding and that was approved by the Commission pursuant to Section 9-201 of the Act, especially given the lack of other limiting factors in the GEE Plan that Section 8-103/8-104 EE plans require such as statutory savings goals, penalties, carve-outs, limitations on expenditures on emerging technologies and evaluation, and

requirement that the EE plan must provide an opportunity for all customer classes to participate.

While the parties cite Commission orders from the statutorily-mandated energy efficiency programs offered under Sections 8-103 and 8-104, the Parties noticeably fail to cite other Commission Orders related to energy efficiency. Given that the contested costs at issue in this proceeding relate to an EE program that was not subject to Sections 8-103 and 8-104, Staff believes other Commission Orders would be more relevant.

With respect to other voluntary EE programs, the Commission has previously concluded that regardless of whether the portfolio is cost-effective, if a program or measure reduces net benefits to ratepayers then it should not continue, even for an additional year. In MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, the Commission stated:

In this proceeding, MidAmerican has shown that, taken as a whole, its energy efficiency programs have produced net economic benefits of almost \$4 million for its Illinois customers. These results cannot be ignored and guide the Commission's conclusions. MidAmerican now proposes to continue its current programs for one additional year and to file, on July 1, 2013, a new energy efficiency plan for the Commission's approval. The Commission finds MidAmerican's proposed process to be reasonable.

Two of MidAmerican's energy efficiency programs were shown to be cost-ineffective for Illinois ratepayers: the Residential Equipment Program and the New Construction Program. For the transition year, the Company proposes to provide the Commission by December 3, 2012 with an updated Residential Equipment program, which will include only cost effective measures. Although Staff complains that the Company should have already provided this information, the Commission accepts the Company's proposal to file a waiver request on December 3rd to eliminate the cost-ineffective measures.

Final Order at 15-16, MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, Docket No. 12-0132 (October 17, 2012) (emphases added).

The Parties argue against Staff's recommendation on the basis that it would discourage the utilities to invest in long-term programs. The Commission has previously concluded that regardless of whether an energy efficiency program is long-term, unless the Company makes changes to ensure cost-effectiveness for the energy efficiency program for a single year, the Commission cannot in good conscience require Illinois ratepayers to continue to fund the energy efficiency program for that additional year. Final Order at 16, MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, Docket No. 12-0132 (October 17, 2012). The Commission decision in that case related to an energy efficiency program whose budget for the additional year was \$19,705, which is \$100,000 less than the amount of ratepayer funds AIC spent in PY2 on the cost-ineffective SB HVAC Program. Specifically, the Commission's Order states:

With respect to continuation of the Residential New Construction during the transition year, the Company points out that its proposed 2013 budget is only \$19,705. The Company argues that because the Residential New Construction is a long-term program and the program infrastructure is already in place, it is reasonable for the Commission to allow that program to continue in 2013. It is clear from the record that the Residential New Construction Program has failed a post-plan evaluation cost-benefit analysis under both the TRC Test and the Societal Test and, therefore, the Commission cannot in good conscience require Illinois ratepayers to continue to fund this program - even on an interim basis. Moreover, unlike the Residential Equipment Program, the Company makes no suggestion for ensuring the cost-effectiveness of the program for the transitional year. MidAmerican can, of course, include this program in its 2013 filing, but it must demonstrate at least a

reasonable probability that it will be cost-effective in the future and any proposal will be scrutinized carefully by the Commission.

Final Order at 16, MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, Docket No. 12-0132 (October 17, 2012) (emphases added).

In another Commission Order related to energy efficiency programs, the Commission explicitly rejected and accepted certain energy efficiency programs based on program-level cost-effectiveness. For example, the Commission did not approve ratepayer funding for the CUB Energy Saver Program through the Illinois Power Agency's ("IPA") procurement because the proposed energy efficiency program was shown to be cost-ineffective. Final Order at 270-271, Illinois Power Agency: Petition for Approval of Procurement Plan, Docket No. 12-0544 (December 19, 2012).

AIC relies on the three-year cost-effectiveness projection for the EE program to justify continuing the EE program in PY2. Ignoring the contradicting assumptions used in this three-year cost-effectiveness analysis for the moment (as these were already addressed in detail in Staff's IB), the Company has an obligation to prudently manage the EE program in PY2, and as the Company's final version of the PY2 implementation plan clearly shows, the final forecast for PY2 was that the SB HVAC Program would provide negative net benefits to ratepayers. Joint Cross Ex. 1 at 353. AIC's claims that Staff is advocating for dispositive treatment of every "preliminary, interim TRC value" should be rejected. While the preliminary, interim TRC values show the SB HVAC Program was going to be cost-ineffective for PY2, the final TRC values the Company relied upon when making its decision that are contained in the final PY2 implementation report continued to

show the SB HVAC Program was going to result in negative net benefits to ratepayers in PY2. Joint Cross Ex. 1 at 353. Further, it was the assumption of the proportion of cost-ineffective gas tune-up measures in the SB HVAC Program that was driving the changes in the TRC values for the SB HVAC Program. Staff Ex. 2.0R at 9. There was never any doubt that the gas tune-up measure was cost-ineffective. The record shows that the cost-ineffectiveness of the gas tune-up measure is undisputed. The gas tune-up measure is extremely labor intensive, costly, and provides a small amount of energy savings. Joint Cross Ex. 1 at 305. It was unreasonable and imprudent for AIC to continue promoting the cost-ineffective gas tune-up measure which was expected to substantially reduce net benefits to customers in PY2.

Further, while the Company argues against using any interim TRC values in making decisions in this proceeding, it was the Company who advocated in the GEE Plan docket that it would like to retain the flexibility to offer measures “if and when projected benefits exceed projected costs,” taking into account projected natural gas prices and other cost factors as well. Staff Ex. 4.0R at 23.

V. Policy

The parties misconstrue Staff’s recommendation in this case and allege that Staff is recommending that the Company rely solely on the TRC test without considering other factors. Staff believes the likely source for this misinterpretation is AIC’s testimony, as Staff noted in rebuttal testimony, the Company repeatedly mischaracterizes Staff’s position as recommending the Company rely solely on the TRC test without considering other factors. Staff Ex. 4.0R at 22. As provided in Staff’s responses to the Company’s data

requests, Staff believes other factors should be considered. Joint Cross Ex. 1 at 2-3, 5-7. To emphasize, Staff is not advocating the utilities blindly follow the TRC test.

Further, Staff's recommendation in this case is entirely consistent with the Commission's findings in the GEE Plan Order. While the Company argues in this proceeding against using any interim TRC values in making decisions and that Staff's recommendation is "vague" and TRC values are so "volatile", it was the Company who originally advocated in the GEE Plan docket that it would like to retain the flexibility to offer measures "if and when projected benefits exceed projected costs," taking into account projected natural gas prices and other cost factors as well. Staff Ex. 4.0R at 23. It is odd that the Company so strongly opposed a policy recommendation in this docket that it previously agreed to in the GEE Plan docket. Staff Ex. 4.0R at 23.

The NRDC argues in its IB that the "Staff proposal should be rejected." NRDC IB at 2. NRDC goes on to describe its interpretation of Staff's proposal in this docket. The proposal in which NRDC describes is not a Staff proposal in this docket. NRDC misinterprets Staff's recommendations and misconstrues the main issue in this case. Thus, the Commission need not make a decision in this docket regarding a non-issue.

VI. Rejection on Staff's Recommendation Would Reduce Net Benefits to Ratepayers

While AIC and intervening parties argue that adopting Staff's recommendation would hurt ratepayers and energy efficiency in Illinois, the opposite is true. Such a ruling would be viewed as all that matters is cost-effectiveness at the portfolio level. While AIC argues that point, and recommended that a hindsight review of cost-effectiveness at the

portfolio level should be adopted for determining prudence, AIC never makes clear whether it believes that all of the portfolio costs would be disallowed if it was determined the portfolio was not cost-effective, or whether only the incremental costs related to imprudence should be disallowed, of which could be interpreted as the costs associated with the cost-ineffective programs and measures, or the portfolio administration costs if all the measures and programs are cost-effective.

Staff cannot find any evidence in the record which tends to indicate the possibility that the SB HVAC Program could have been reasonably projected to be cost-effective with the continuation of the tune-up portion of the program. Staff Ex. 4.1 at 21; Joint Cross Ex. 1 at 21.

Staff maintains that since the Commission provided AIC with the flexibility to implement specific measures as they become cost-effective in Docket No. 08-0104, AIC should be attuned to information on the efficiency programs as it becomes available, and use that information to make reasonable and prudent modifications to its GEE Plan. In fact, AIC has testified in past energy efficiency dockets that “Ameren Illinois agrees with Ms. Hinman’s statement that all planned measures should be cost-effective.” Staff Ex. 4.0R at 8. Staff believes that unless the circumstances warrant an expectation that the cost-effectiveness would change in the future or benefits elsewhere in the program were tied to cost-ineffective measures, the ineffective measures should not continue. Staff Ex. 4.0R at 6.

VII. Conclusion

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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